

REMARKS

This Application has been carefully reviewed in light of the Final Action dated August 18, 2005. In order to advance prosecution of the present Application, Claims 1, 11, 16, and 20 have been amended. Applicant respectfully requests reconsideration and favorable action in this Application.

Claims 1-10 and 16-20 stand objected to under 37 C.F.R. §1.75 for various informalities. Independent Claims 1, 16, and 20 have been amended to address informalities identified by the Examiner. Claim 19 further limits Claim 16 by requiring a table of incoming link and path identifiers and of outgoing link and path identifiers to be maintained by at least one of the first and second data switches. Therefore, Applicant respectfully submits that Claims 1-10 and 16-20 are in accordance with 37 C.F.R. §1.75.

Claims 17, 18, and 20 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Independent Claim 16, from which Claims 17 and 18 depend, and Claim 20 has been amended to address matters raised by the Examiner. Therefore, Applicant respectfully submits that Claims 17, 18, and 20 are in accordance with 35 U.S.C. §112, second paragraph.

Claims 1-3, 6, and 8-20 stand rejected under 35 U.S.C. §102(e) as being anticipated by Haskin, et al. Independent Claims 1 and 16 recite in general an ability to establish a downstream protection path associated with the working path and establish an upstream reverse notification path for signal traffic separate from the protection path and associated with said working path. Independent Claim 11 similarly recites an upstream data link for sending an upstream reverse notification message that is separate from a protection path. By contrast, the Haskin, et al. patent merely provides a

working path (e.g., 13-35-57) and an alternate protection path (e.g., 13-35-53-31-12-24-46-67) between an originating switch and a destination switch for data transport. The Haskin, et al. patent does not provide a reverse notification path separate from its protection path as required by the claimed invention. Support for the above recitation can be found at page 11, lines 15-19, of Applicant's specification. Therefore, Applicant respectfully submits that Claims 1-3, 6, and 8-20 are not anticipated by the Haskin, et al. patent.

Claims 4 and 5 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Haskin, et al. in view of Lee, et al. Independent Claim 1, from which Claims 4 and 5 depend, has been shown above to be patentably distinct from the Haskin, et al. patent. Moreover, the Lee, et al. patent does not include any additional disclosure combinable with the Haskin, et al. patent that would be material to patentability of these claims. Therefore, Applicant respectfully submits that Claims 4 and 5 are patentably distinct from the proposed Haskin, et al. - Lee, et al. combination.

Claim 7 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Haskin, et al. Independent Claim 1, from which Claim 7 depends, has been shown above to be patentably distinct from the Haskin, et al. patent. Therefore, Applicant respectfully submits that Claim 7 is patentably distinct from the Haskin, et al. patent.

This Response to Examiner's Final Action is necessary to address the new grounds of rejection and newly cited art introduced by the Examiner. This Response could not have been presented earlier as the Examiner has only now introduced the new grounds of rejection and newly cited art in support thereof not previously of record in the Application.

Applicant respectfully requests withdrawal of the

finality of the present Office Action . "Before final rejection is in order a clear issue should be developed between the examiner and applicant." M.P.E.P. §706.07. A clear issue has not been developed between the Examiner and Applicant with respect to the Haskin, et al. and Lee, et al. patents as the Examiner has only now used the Haskin, et al. and Lee, et al. patents as the main support for the rejection of these claims. According to M.P.E.P. §706.07, hasty and ill-considered final rejections are not sanctioned. "The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application." M.P.E.P. §706.07. "To bring the prosecution to as speedy conclusion as possible and at the same time to deal justly by both the applicant and the public, the invention as disclosed and claimed should be thoroughly searched in the first action and the references fully applied; and in reply to this action the applicant should amend with a view to avoiding all the grounds of rejection and objection." M.P.E.P. §706.07.

Applicant responded to the first Office Action of November 2, 2004 and overcame the Buyukkoc, et al., Rekhter, and Fang, et al. patents used by the Examiner to reject these claims. Now the Examiner comes back with the Haskin, et al. and Lee, et al. patents in place of the Buyukkoc, et al., Rekhter, and Fang, et al. patents which were available to the Examiner for consideration in the previous Office Action but which the Examiner did not use as a basis for any rejection of these claims in the previous Office Action. The Examiner now uses the Haskin, et al. and Lee, et al. patents in the same

manner as the Buyukkoc, et al., Rekhter, and Fang, et al. patents were used in the previous Office Action. Thus, the Examiner has not followed the M.P.E.P. where it states that "[s]witching from . . . one set of references to another by the examiner in rejecting in successive actions claims of substantially the same subject matter, will alike tend to defeat attaining the goal of reaching a clearly defined issue for an early termination, i.e., either an allowance or a final rejection." Amendments to the claims in response to the previous Office Action did not substantially change the subject matter of the claims to force the Examiner to now use the Haskin, et al. and Lee, et al. patents where they could not have been used in the previous Office Action. Based on this fact alone, the finality of the present action is premature. Moreover, the Examiner's reasons for supporting the finality of the present Final Action makes no sense as there was no joint research agreement prior art in this Application to prompt the new grounds of rejection.

As a result, Applicant has not been given the cooperation of the Examiner as required and has been denied an opportunity to fully address the Haskin, et al. and Lee, et al. patents and the associated new grounds of rejection that could have been cited in the previous Office Action. By not providing Applicant the capability to fully respond to the Haskin, et al. and Lee, et al. patents without the assurance that the response would be considered and entered, the Examiner has prematurely cut off prosecution of the present Application. Applicant has not been given a full and fair hearing to which it is entitled and a clear issue has not been developed as required. Therefore, Applicant respectfully submits that the final rejection is premature and that the finality of the present Office Action be withdrawn.

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CONCLUSION

Applicant has now made an earnest attempt to place the Application in condition for allowance. For the foregoing reasons and for other reasons clearly apparent, Applicant respectfully requests reconsideration and full allowance of all pending claims.

The Commissioner is hereby authorized to charge any amount required or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

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